



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

MOTION TO DISMISS AND FOR SUMMARY RELIEF DENIED: September 6, 2007

CBCA 49

LEONARD GREENE,

Appellant,

v.

DEPARTMENT OF HOMELAND SECURITY,

Respondent.

Donna U. Grodner and Charlotte C. McDaniel McGehee of Grodner & Associates, Baton Rouge, LA, counsel for Appellant.

Jean Hardin, Office of Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, Washington, DC; and Janice L. Kazmier, Office of Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, New Orleans, LA, counsel for Respondent.

Before Board Judges **STERN**, **FENNESSY**, and **SOMERS**.

STERN, Board Judge.

Appellant, Leonard Greene, filed this appeal from the failure of the contracting officer of the Federal Emergency Management Agency (FEMA) to issue a decision on appellant's claim of \$127,050, for lease payments. The Department of Transportation Board of Contract Appeals (DOTBCA) assigned the appeal docket number 4582¹ and pursuant to the Contract

¹ Pursuant to statute all the cases pending before the DOTBCA were transferred to the Civilian Board of Contract Appeals on January 6, 2007. Pub. L. No. 109-163, § 847, 119 Stat. 3136, 3391 (2006). This Board assigned the appeal docket number CBCA 49.

Disputes Act (CDA), 41 U.S.C. § 605(c)(5) (2006), directed the contracting officer to issue a decision or show cause why a decision need not be issued. Thereafter, the contracting officer issued a “Determination and Findings,” which stated that a contract never came into existence and denied appellant’s claim. Mr. Greene claims that he executed a contract with a representative of FEMA, Mr. Robert Ford, for the lease of mobile home lots in Jarreau, Louisiana, to FEMA. These lots were made available for the placement of trailers for housing after hurricanes Katrina and Rita.

FEMA moves to dismiss for lack of jurisdiction or in the alternative for summary relief on the claimed basis that no one with the requisite authority to bind the Government signed or approved the contract and further, that the Government did not take possession of appellant’s property.

Background²

FEMA states that on September 28, 2005, Mr. Robert Ford, a FEMA Federal Disaster Assistance Employee (DAE) who was employed in Louisiana to work on recovery after Hurricane Katrina, contacted appellant on behalf of FEMA regarding the feasibility of placing trailers on appellant’s land in the Island Woods subdivision in Pointe Coupee Parish, Louisiana. This event occurred during the initial recovery stages in the aftermath of Hurricanes Katrina and Rita. FEMA states that DAEs were temporary employees hired by FEMA to work on specific disasters.

Mr. Ford informed appellant that the contract was dependent on Pointe Coupee Parish permitting the mobile homes to be placed on appellant’s land. The record contains correspondence from appellant on February 15, 2006, showing attempts to gain Parish approval. FEMA claims that the Parish did not approve the placement of trailers on the lots. FEMA also argues that the proposed contract was not approved by an authorized official. Further, FEMA alleges that though Mr. Ford signed the proposed lease agreements with appellant on September 28 and October 17, 2005, his purpose was only to witness appellant’s signature. FEMA claims that Mr. Ford was not authorized to bind the Government to a contract.

Appellant began billing FEMA in the amount of \$17,700 per month effective October 17, 2005. Upon receipt of bills, FEMA sent a “Receiving and Inspection Report” to appellant stating as follows: “Non Concur Pads are not Useable and there is no parish approval.” Appeal File, Exhibit 4.

² These facts are those set forth by the parties and are only for the purpose of deciding this motion.

Appellant contends that in a telephone call with Mr. Ford, he was informed that the lease was approved. Appellant also argues that FEMA's claim that the lease was dependent on Pointe Coupee Parish's permission to place mobile homes on appellant's land is incorrect. In any event, appellant claims that it had the parish's approval to place mobile homes on the property and that one FEMA home was actually placed on the property.

Appellant also argues that months after the lease was allegedly agreed to, FEMA persons indicated that actions were being taken to place trailers on the lots. Appellant claims that he was never told that the lease was not approved.

Discussion

Summary relief is only appropriate where there is no genuine issue as to any material fact and the moving party is entitled to relief as a matter of law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986). Any doubt on whether summary relief is appropriate is to be resolved against the moving party. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). The moving party shoulders the burden of proving that no question of material fact exists. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157 (1970). If the Board determines that a material fact is in dispute, summary relief must be denied.

Appellant alleges the formation of a lease and FEMA denies that it agreed to be bound. Appellant claims that FEMA personnel made statements that were binding on respondent. In addition, appellant alleges that FEMA's actions were consistent with the existence of a lease, including the actual placement of a trailer on appellant's property.

These are factual issues that go to the very heart of the dispute. The record is unclear as to whether the persons who communicated with appellant were authorized to bind the Government and whether authorized officials were aware of the actions of these persons or whether an unauthorized action was subsequently ratified. The scope of Mr. Ford's authority is in contention. The record is also not clear regarding the placement of a FEMA trailer on Mr. Greene's property. These facts remain to be proven at trial. We find that these facts in dispute are material and that summary relief is not appropriate.

For the same reasons, FEMA's motion to dismiss for lack of jurisdiction is denied. The Board has jurisdiction under the CDA, 41 U.S.C. §§ 601-613, to decide claims by individuals against the Government that arise out of a contract. Leases are contracts within the meaning of the CDA. See *Key Federal Finance v. General Services Administration*, CBCA 411, et al., 07-1 BCA ¶ 33,555. The existence of the lease cannot be determined until the case has been tried.

Decision

FEMA's **MOTION TO DISMISS AND FOR SUMMARY RELIEF** is **DENIED**.

JAMES L. STERN
Board Judge

We concur:

EILEEN P. FENNESSY
Board Judge

JERI KAYLENE SOMERS
Board Judge